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6   **IN THE UNITED STATES DISTRICT COURT**

7   **FOR THE DISTRICT OF ARIZONA**

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9   Jack Meredith,   No. CV-13-02013-PHX-DGC

10   Plaintiff,   **ORDER**

11   v.

12   Shepherd Properties Company,

13   Defendant.

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15   Defendant Shepherd Properties Company d/b/a ShepCo Commercial Finishes

16   ("ShepCo") has filed a motion for judgment on the pleadings pursuant to Rule 12(c) of

17   the Federal Rules of Civil Procedure. Doc. 31. Plaintiff Jack Meredith has filed a

18   response or, in the alternative, a motion to amend. Doc. 36. Plaintiff has also filed a

19   motion for leave to file a surreply. Doc. 43. For the reasons that follow, the Court will

20   deny the motions.

21   **I.   Background.**

22   Plaintiff was an employee of Tradesman International, which "is an employee

23   leasing company that loans workers to contractors to complete construction projects."

24   Doc. 36 at 2. Plaintiff was allegedly "leased" to ShepCo, which assigned him to

25   complete construction of a commercial building in Scottsdale, Arizona. *Id.* On May 20,

26   2012, Plaintiff fell off a ladder and broke his arm while on the job. *Id.*; Doc. 31 at 3.

27   Plaintiff filed a claim for workers' compensation, which was denied by Defendants New

28   Hampshire Insurance Company and Gallagher Bassett Services (collectively the

1   "Insurance Defendants"). Doc. 31 at 3. Plaintiff alleges that ShepCo "discouraged and
2   created unnecessary road blocks to prevent [Plaintiff]'s necessary surgery for his
3   fractured arm," and that ShepCo "knew that New Hampshire was acting in bad faith and
4   substantially assisted New Hampshire's breach." Doc. 36 at 3. Plaintiff further contends
5   that "ShepCo's conduct culminated in its retaliatory termination of [Plaintiff][.]" *Id.*
6   Plaintiff filed this action asserting bad faith against the Insurance Defendants and
7   retaliatory termination and aiding and abetting bad faith against ShepCo. *See* Doc. 1.

8   **II.   Legal Standard.**

9   A motion for judgment on the pleadings "is properly granted when, taking all the
10   allegations in the non-moving party's pleadings as true, the moving party is entitled to
11   judgment as a matter of law." *Fajardo v. County of L.A.*, 179 F.3d 698, 699 (9th Cir.
12   1998); *see Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 955 (9th Cir. 2004). In
13   other words, dismissal pursuant to Rule 12(c) is inappropriate if the facts as pled would
14   entitle the plaintiff to a remedy. *Merchants Home Delivery Serv., Inc. v. Hall & Co.*, 50
15   F.3d 1486, 1488 (9th Cir. 1995).

16   In considering a motion for judgment on the pleadings, the Court cannot consider
17   evidence outside the pleadings unless the Court treats the motion as one for summary
18   judgment pursuant to Federal Rule of Civil Procedure 56. Fed. R. Civ. P. 12(c). If the
19   Court treats the motion as having been brought under Rule 56, the Court must give all
20   parties the opportunity to present all material pertinent to such motion. *Id.*

21   **III.   Analysis.**

22   ShepCo initially argues that it is entitled to judgment on the pleadings because it
23   was not Plaintiff's employer. Doc. 31 at 2. Plaintiff responds that ShepCo was his
24   "borrowing employer" under Arizona law. Doc. 36 at 1. ShepCo concedes this argument
25   in its reply, but then argues that it "is entitled to immunity from [Plaintiff]'s aiding and
26   abetting claim pursuant to A.R.S. § 23-1022(A)[.]" Doc. 42 at 2. ShepCo cannot
27   abandon the original basis for its motion and assert a new basis in its reply brief.
28   Arguments raised for the first time in a reply brief are deemed waived. *Delgadillo v.*

1   *Woodford*, 527 F.3d 919, 930 n.4 (9th Cir. 2008). Because ShepCo has conceded that its

2   motion is moot based on the arguments in Plaintiff's response, the Court will deny the

3   motion.

4   **IT IS ORDERED** that ShepCo's motion for judgment on the pleadings (Doc. 31)

5   is **denied**. Plaintiff's motion to amend (Doc. 36) is **denied** as moot. Plaintiff's motion

6   for leave to file a surreply (Doc. 43) is also **denied** as moot.

7   Dated this 6th day of March, 2014.

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                    David G. Campbell
                 United States District Judge

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